

**BEFORE THE  
VIRGINIA STATE CORPORATION COMMISSION**

Petition of	)	
	)	
Cavalier Telephone, LLC.	)	Case No. PUC-2002-00171
	)	
For Arbitration with Verizon Virginia, Inc.	)	
pursuant to 47 U.S.C. § 252(b) of the	)	
Communications Act of 1934, as amended by the	)	
Telecommunications Act of 1996	)	

**RESPONSE OF CAVALIER TELEPHONE, LLC  
TO NEW ISSUES RAISED BY VERIZON VIRGINIA INC.**

Cavalier Telephone, LLC ("Cavalier"), through its undersigned counsel, responds to the new issues raised by Verizon Virginia Inc. ("Verizon") in its September 9, 2002 "Response of Verizon Virginia Inc." in this proceeding ("Response").

**I. INTRODUCTION**

Cavalier disagrees with Verizon's mischaracterization of Cavalier's allegations and the negotiation process. "Negotiating" with Verizon is at best a Sisyphean process.

**II. SUPPORTING EXHIBITS**

Verizon's Exhibit "A" is obviously a new development to Cavalier, because Verizon adamantly insisted upon using its own model agreement as a basis for negotiations until August 13, 2002—near the very end of the 160-day negotiation period under 47 U.S.C. § 252. Cavalier cautiously welcomes Verizon's change of position, but Cavalier notes that Verizon only produced Exhibit "A" after the close of the 160-day negotiation period, and not in redlined form.

**III. NEGOTIATIONS**

As indicated by its almost exclusive reliance on one August 13, 2002 e-mail (Response at p. 2, p. 2 nn. 1 and 2, p. 3, p. 3 nn. 3 and 4, p. 4, and p. 5 n. 8), Verizon began negotiating in

earnest very late in the negotiation process. Nonetheless, as Cavalier clarified in response to that e-mail,<sup>1</sup> Cavalier consistently sought to use its prior interconnection agreement as the basis for negotiations concerning Virginia. In fact, in that response to Verizon, Cavalier sought to avoid precisely the result achieved by Verizon in its Response: the sudden appearance of issues that “are buried in [Verizon’s] new template.” (*Id.*)

In the same communication, Cavalier also clarified that it had suggested using provisions from the new “MCI/Cox/AT&T agreement” (*id.*), but that Cavalier’s individual issues remained the same. Verizon now contends that this suggestion is “unacceptable” because none of the forthcoming agreements has yet been finalized, yet Cavalier’s goal was simply for the parties to benefit from the extensive hearings conducted by the FCC, and from the FCC’s findings.

Finally, Verizon wrongly claims that Cavalier did not comply with 47 U.S.C. § 252 “because it has not identified all unresolved issues in its Petition” (Response at p. 5). Verizon points to six new issues and claims that they were listed in its August 13, 2002 e-mail, when that e-mail only stated that “Verizon would expect to make certain limited changes to outdated provisions of [the pre-existing] agreements” between the parties, without proposing any specific changes. This one-off allusion did not identify “unresolved issues,” as may be easily discerned by comparing it with specific language proposed by Cavalier on July 31, 2002 in its 19-page annotated draft of new interconnection language for the unresolved issues identified by Cavalier.

For these reasons, Cavalier’s Petition is ripe for adjudication and should proceed.

#### **IV. UNRESOLVED ISSUES AND THE POSITIONS OF THE PARTIES**

**ARBITRATION ISSUES 1-19:** Cavalier disagrees with many of Verizon’s contentions, but limits this response, pursuant to 47 U.S.C. § 252(b), to the new issues identified by Verizon.

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<sup>1</sup> See August 13, 2002 e-mail from Cavalier to Verizon, copy attached as Exhibit “D” to this Response.

**ARBITRATION ISSUE 20:** Adoption of Verizon's Exhibit A—To the extent that Cavalier has failed to dispute Verizon's positions and proposed contract language, should the Commission order inclusion of that language in the resulting interconnection agreement?

**Cavalier's Alleged Position:**<sup>2</sup> "Cavalier alone should be permitted to define the appropriate scope of changes that should be made to the parties' existing interconnection agreement. Cavalier should not have to review Verizon's current contract proposal, analyze whether it is acceptable, or describe how it is objectionable."

**Verizon's Position:** Verizon's position is set forth on pages 86-90 of its Response and is not restated here.

**Cavalier's Actual Position:** Verizon should have not have waited until after the arbitration was commenced to adopt new negotiating positions and to adopt new proposed contract language. Verizon's last-minute change of position should not somehow obligate Cavalier to adopt such eleventh-hour terms or conditions, particularly when Verizon admits that some of the proposed contract language is a combination of the pre-existing agreement between the parties and language from Verizon's "model" agreement. (See, e.g., Response at p. 88.) Cavalier should be permitted an adequate opportunity to respond to Verizon's newly proposed language, as outlined in pp. 86-90 of Verizon's Response. In Delaware, the Hearing Examiner ordered such a response by October 7, 2002, recently extended to October 14, 2002, and Cavalier respectfully suggests that a similar schedule be followed in this proceeding, once the State Corporation Commission ("the Commission") determines whether it will exercise its jurisdiction or permit the parties to proceed before the Federal Communications Commission ("the FCC").

**ARBITRATION ISSUE 21:** Insurance and Indemnity—Should insurance levels be increased to commercially reasonable levels? Should indemnity provisions be clarified, inter alia, so that they cover the parties and their officers, directors, employees and affiliates?

**Cavalier's Alleged Position:** "Unknown."

**Verizon's Position:** Verizon's position is set forth on pages 91-93 of its Response and is not restated here.

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<sup>2</sup> With respect to all new issues raised by Verizon, "Cavalier's Alleged Position" is the position that Verizon ascribes to Cavalier. Cavalier's position is described under "Cavalier's Actual Position."

**Cavalier's Actual Position:** Verizon did not identify this specific issue until after Cavalier commenced this arbitration. Nonetheless, Cavalier responds as follows. (a) With respect to insurance, ¶¶ 21.2-21.7 of Verizon's proposed interconnection agreement (Exhibit "A," pp. 17-19, as identified in Response at p. 91<sup>3</sup>) deal with default and termination, not insurance. However, with respect to the "highlights" identified by Verizon (Response at p. 92), the following coverage should suffice: (i) commercial general liability at \$1,000,000 per occurrence, (ii) automobile liability at \$1,000,000 combined single limit, (iii) worker's compensation insurance within statutory limits, (iv) employers' liability of \$100,000, and (v) excess (umbrella) of \$10,000,000 aggregate. With respect to the other specific language proposed in ¶¶ 11.1A-11.7A in Exhibit "A" to Verizon's Response (at pp. 11-13), Cavalier believes that it should have an adequate opportunity to review the details and address the matter with Verizon. (b) With respect to indemnity, Cavalier perceives no valid reason to extend the already broad indemnity language contained in ¶¶ 11.1-11.3 of the parties' pre-existing interconnection agreement (Verizon's Response, Exhibit "C" at Part A-9 to Part A-10). Specifically, ¶ 11.2 of that agreement already specifically extends to Verizon's officers, directors, employees, and affiliates. Nonetheless, if the indemnity issue is addressed at all, then all such provisions should be reciprocal in nature and should not unilaterally favor Verizon.

**ARBITRATION ISSUE 22:** Reciprocal compensation/intercarrier compensation—Should the interconnection agreement provide for intercarrier compensation consistent with the requirements of preemptive federal law, including the FCC's *ISP Remand Order*?

**Cavalier's Alleged Position:** "In an ultimately futile effort to continue receiving windfall reciprocal compensation payments for as long as possible, Cavalier is trying to set up roadblocks to Verizon's implementation of the *ISP Remand Order*. Cavalier also demands that the agreement include terms and condition [*sic*] now rejected by the FCC."

**Verizon's Position:** Verizon's position is set forth on pages 94-100 of its Response and is not restated here.

**Cavalier's Actual Position:** Verizon did not identify this specific issue until after Cavalier commenced this arbitration. Moreover, Verizon's mischaracterization of Cavalier's position is grotesquely inaccurate. Nonetheless, Cavalier responds as follows. Cavalier

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<sup>3</sup> Except at pp. 88-90, Verizon's references to specific paragraphs of a proposed interconnection agreement seem to relate to the agreement that Verizon proposed in Delaware and not the one that Verizon proposed in Virginia.

was not among the competitive local exchange carriers who sought to collect “windfall” revenue from ISP-bound traffic. From the outset, Cavalier’s business plan and business activities have focused on acquiring facilities-based residential and business customers. Cavalier notes that Verizon cannot muster any allegations, or even one mention of Cavalier (see Response at pp. 94-100) to support its outrageous mischaracterization.<sup>4</sup> Simply put, not only is Cavalier **not** trying to collect revenue for imbalanced ISP-bound traffic, but to the contrary, Cavalier believes that the new interconnection agreement between the parties should bar Verizon from improperly disputing valid bills on this fictitious basis, and that Verizon should stop billing Cavalier for imbalanced, ISP-bound traffic in violation of applicable law. Finally, in an abundance of caution, Cavalier believes that it should be afforded an adequate opportunity to respond to the specifics of the argument and language now advanced by Verizon.

**ARBITRATION ISSUE 23:** Assurance of payment—Should the interconnection agreement include language requiring adequate assurance of payment from CLECs for amounts due or to become due?

**Cavalier’s Alleged Position:** “Cavalier has never responded to Verizon’s proposal regarding assurance of payment, so Verizon does not know if Cavalier disputes its assurance of payment proposal, and if so, on what basis.”

**Verizon’s Position:** Verizon’s position is set forth on pages 101-102 of its Response and is not restated here.

**Cavalier’s Actual Position:** Verizon did not identify this specific issue until after Cavalier commenced this arbitration. Nonetheless, Cavalier responds as follows. Verizon complains that “the current volatile telecommunications environment makes Verizon’s need [for adequate assurance of payment] more acute,” and apparently believes that the current protections offered under provisions such as § 366 of the Bankruptcy Code, 11 U.S.C. § 366, are inadequate. Cavalier disagrees, believing that § 366 should suffice. Further, even if any “adequate assurance” language were to be added to the interconnection agreement, then such language must reflect the fact that the agreement covers services provided by Cavalier to Verizon, as well as services provided by Verizon to Cavalier.

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<sup>4</sup> In addition to relying on non-existent “facts,” Verizon refers to equally fictitious subparagraphs of the proposed interconnection agreement that do not exist. Compare Response at p. 94, citing ¶¶ 1.26a, 1.31a, 1.40, 1.44a, 1.61a, 1.61b, 1.71, 1.71b, 1.74, 5.72, 5.7.3, 5.7.4, and 5.8 (ostensibly in connection with intercarrier compensation) with Exhibit “A” at ¶¶ 1.1-1.4 (scope of agreement) and ¶ 5 (assignment).

Thus, any new language—such as that proposed by Verizon, in ¶¶ 4.1-4.9 of Exhibit “A,” and not in § 20<sup>5</sup>, as alleged by Verizon (Response at p. 101)—should be reciprocal, and should require Verizon to provide adequate assurance of payments due to Cavalier. As Verizon notes with respect to Worldcom, the identity of an interconnecting carrier and its purported financial stability alone do not guarantee payment. Moreover, if further language were to be added, it should cover at most one month’s advance payment, which would be more consistent with the default and termination provisions in ¶¶ 21.1 *et seq.* of the pre-existing and proposed interconnection agreements, which provides for termination or suspension for breach on 30 days’ written notice.

**ARBITRATION ISSUE 24: Standards of Performance—Should the interconnection agreement reference currently applicable standards of performance?**

**Cavalier’s Alleged Position:** “Although Cavalier has never responded to Verizon’s proposal regarding standards of performance, Cavalier appears content to rely on a reference to standards of performance and associated requirements superseded by the *Virginia Collaborative*.”

**Verizon’s Position:** Verizon’s position is set forth on pages 103-104 of its Response and is not restated here.

**Cavalier’s Actual Position:** Verizon did not identify this specific issue until after Cavalier commenced this arbitration. Nonetheless, Cavalier responds as follows. Cavalier does not believe that the new interconnection agreement should detract from any performance plan previously or hereafter adopted by the Commission or any other regulatory or adjudicative authority of competent jurisdiction. However, any such plan should not be a ceiling for Verizon’s obligations. Instead, Verizon should be subject to any additional performance requirements that are necessary, even if they exceed—but do not contradict—the requirements of any plan adopted by the Commission or any other regulatory or adjudicative authority of competent jurisdiction.

**ARBITRATION ISSUE 25: Rights of Way—Should the interconnection agreement contain detailed terms and conditions governing Cavalier’s access to Verizon’s poles, ducts, conduits, and rights of way?**

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<sup>5</sup> Section 20 deals with publicity. See Response, Exhibit “A”

**Cavalier's Alleged Position:** "All terms and conditions governing Cavalier's access to Verizon's poles, ducts, conduits and rights of way should be contained in the interconnection agreement."

**Verizon's Position:** Verizon's position is set forth on pages 105-106 of its Response and is not restated here.

**Cavalier's Actual Position:** Verizon did not identify this specific issue until after Cavalier commenced this arbitration. Nonetheless, Cavalier responds as follows. Although it omits mention of poles, Verizon appears to acknowledge that it must allow Cavalier access to its poles, ducts, conduits, and rights-of-way, pursuant to 47 U.S.C. §§ 224 and 251(b)(4). (See Response at p. 105.) These access duties are subject to negotiation under 47 U.S.C. § 252(a)(1) and arbitration under 47 U.S.C. § 252(b)(1). It is immaterial to Cavalier whether the resulting rates, terms, and conditions are incorporated directly into the interconnection agreement, as was done in the pre-existing agreement (see Attachment VI to Verizon's Response, Exhibit "C"), or incorporating a separate license agreement by reference. However, Cavalier strongly disputes Verizon's contentions to the extent that Verizon seeks to preclude Cavalier from seeking to adopt any rates, terms, and conditions that are not already part of what Verizon describes as its "tariffs or existing licensing agreements" (see Response at p. 108).

**WHEREFORE**, petitioner, Cavalier Telephone, LLC, respectfully requests:

- (a) that the Commission grant all relief requested by Cavalier above, including but not limited to allowing Cavalier adequate opportunity to respond to new, specific interconnection language and arguments advanced by Verizon in its Response; and
- (b) that the Commission grant all relief requested by Cavalier in its August 14, 2002 Petition.

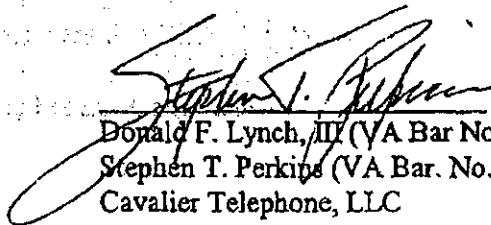
**ALTERNATIVELY**, if the Commission declines to act on Cavalier's Petition for the reasons stated in the August 6, 2002 Order of Dismissal in Case No. PUC-2002-00105, then petitioner, Cavalier Telephone, LLC, respectfully requests that the Commission enter an Order

declining to exercise its jurisdiction pursuant to 47 U.S.C. § 252(b) so that the parties may proceed with this arbitration before the Federal Communications Commission.

October 4, 2002.

Respectfully submitted,

Cavalier Telephone, LLC



Donald F. Lynch, III (VA Bar No. 40069)

Stephen T. Perkins (VA Bar. No. 38483)

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**CERTIFICATE OF SERVICE**

I certify that on this 4<sup>th</sup> day of October 2002, I have caused a copy of the foregoing pleading to be served, by the means stated below, on the following:

**BY FIRST CLASS U.S. MAIL**

David K. Hall  
Attorney for Verizon  
1515 North Court House Road  
Fifth Floor  
Arlington, Virginia 22201  
Tel.: 703.351.3100,

**BY FAX 772.2143 AND BY FIRST CLASS U.S. MAIL**

Lydia R. Pulley  
Vice President and General Counsel  
Verizon Virginia Inc.  
600 East Main Street, 11<sup>th</sup> Floor  
Richmond, Virginia 23233  
Tel.: 804.772.1547, and

**BY FAX 788.8218 AND BY FIRST CLASS U.S. MAIL**

Kelly L. Faglioni  
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Counsel

DISCLAIMER

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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 11, 2002

PETITION OF

CAVALIER TELEPHONE, LLC

CASE NO. PUC-2002-00171

For Arbitration Pursuant to  
§ 252(b) of the Telecommunications  
Act of 1996 to Establish an  
Interconnection Agreement with  
Verizon Virginia Inc.

ORDER OF DISMISSAL

On August 14, 2002, Cavalier Telephone, LLC ("Cavalier"), filed with the State Corporation Commission ("Commission") a Petition for arbitration of unresolved issues in its interconnection negotiations ("Arbitration Petition") with Verizon Virginia Inc. ("Verizon Virginia") pursuant to § 252(b) of the Telecommunications Act of 1996<sup>1</sup> and § 5-419-10 et seq. of Title 20 of the Virginia Administrative Code. Cavalier requests that the Commission resolve its dispute with Verizon Virginia by: (i) resolving the disputed issues; (ii) affirmatively ordering the parties to submit an interconnection agreement for approval by the Commission in accordance with § 252(e) of the Act; and (iii) retaining jurisdiction until Verizon Virginia has complied with all implementation time frames specified in the

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 et seq. ("Act").

arbitrated interconnection agreement and has fully implemented the terms of this agreement.

On September 9, 2002, Verizon Virginia filed its Response, with exhibits, to the Arbitration Petition of Cavalier. Verizon Virginia responded to the nineteen arbitration issues identified by Cavalier and raised six supplemental issues.

On October 4, 2002, Cavalier filed a Response to New Issues Raised by Verizon Virginia, which addressed each of the six supplemental issues raised by Verizon Virginia.

Cavalier brings its Arbitration Petition pursuant to 47 U.S.C. §§ 251 and 252 and the effective rules implementing these provisions of the Act, issued by the Federal Communications Commission ("FCC") in its Local Competition Order.<sup>2</sup> Cavalier also relies upon this Commission's Procedural Rules for Implementing §§ 251 and 252 of the Act (20 VAC 5-419-10 et seq.). While 20 VAC 5-400-180 F 6 provides for our "arbitration" of contested interconnection matters,<sup>3</sup> Cavalier submits its Arbitration Petition for consideration according to

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<sup>2</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, FCC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) hereinafter the "Local Competition Order."

<sup>3</sup> As discussed in our Order of June 15, 2000, in Case No. PUC-1999-00101, Petition of Cavalier Telephone, LLC, for arbitration of interconnection rates, terms, and conditions, and related relief, the Commission has authority under state law to order interconnection between carriers operating within the Commonwealth, and § 56-38 of the Code of Virginia authorizes us, upon request of the parties, "to effect, by mediation, the adjustment of claims, and the settlement of controversies, between public service companies, and their employees and patrons."

the Act and not simply under state law. Cavalier recognizes in its Arbitration Petition that the Commission may choose to decline to exercise jurisdiction over this matter and instead refer it to the FCC. Cavalier states that it does not oppose such consideration of the Arbitration Petition by the FCC.

The Commission has declined to waive sovereign immunity under the Eleventh Amendment to the Constitution of the United States. We have avoided waiver of our immunity and explained our reasons in the Commission's Order of Dismissal of the Application of AT&T Communications of Virginia, Inc., et al., For Arbitration with Verizon Virginia, Case No. PUC-2000-00282, issued December 20, 2000 ("AT&T Dismissal Order").<sup>4</sup> We repeat below our holding in the AT&T Dismissal Order in which we declined to exercise jurisdiction.

As stated in our November 22, 2000, Order, until the issue of the Eleventh Amendment immunity from federal appeal under the Act is resolved by the Courts of the United States, we will not act solely under the Act's federally conveyed authority in matters that might arguably implicate a waiver of the Commonwealth's immunity, including the arbitration of rates, terms, and conditions of interconnection agreements between local exchange carriers. (AT&T Dismissal Order, p. 2.)

In Verizon Md. Inc. v. Public Serv. Comm'n of Md., 535 U.S.

\_\_\_\_\_, 70 USLW 4432 (2002) ("Verizon Md. v. PSC of Md."), the

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<sup>4</sup> On July 17, 2002, the FCC released the first of two orders (its non-pricing order) on AT&T's Arbitration Petition. See Memorandum Opinion and Order by the Chief, Wireline Competition Bureau, CC Docket No. 00-251.

Supreme Court held that the federal courts have jurisdiction under 28 USC § 1331 to review state commission orders for compliance with the Act or with an FCC ruling issued thereunder<sup>5</sup> and that suit against individual members of the state commission may proceed under the doctrine of Ex Parte Young, 209 U.S. 123 (1908). However, Verizon Md. v. PSC of Md. did not disclose whether state commissions waive their sovereign immunity by participating in § 252 matters nor whether Congress effectively divested the states of their Eleventh Amendment immunity from suit under § 252 of the Act.<sup>6</sup>

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<sup>5</sup> While Verizon Md. v PSC of Md. was decided on the state commission's enforcement of an interconnection agreement, this decision may suggest federal court jurisdiction under 28 USC § 1331 also applies to a state commission's arbitration of an interconnection agreement as well. The Supreme Court noted in bypassing a determination of whether § 252(e)(6) applied to enforcement actions:

...none of the other provisions of the Act evince any intent to preclude federal review of a commission determination. If anything, they reinforce the conclusion that § 252(e)(6)'s silence on the subject leaves the jurisdictional grant of § 1331 untouched. Section 252(e)(4) provides: "No State court shall have jurisdiction to review the action of a state commission in approving or rejecting an agreement under this section." In sum, nothing in the Act displays any intent to withdraw federal jurisdiction under § 1331; we will not presume that the statute means what it neither says nor fairly implies (footnote omitted).

Verizon Md. v. PSC of Md., 70 USLW 4432 at 4435.

<sup>6</sup> "Whether the Commission waived its immunity is another question we need not decide, because - as the same parties also argue - even absent waiver, Verizon may proceed against the individual commissioners in their official capacities, pursuant to the doctrine of Ex Parte Young, 209 U.S. 123 (1908)." Verizon Md. v. PSC of Md., 122 S.Ct. 1753, 70 USLW 4432 at 4435.

The Commission finds that the Arbitration Petition of Cavalier should be dismissed so that the parties may proceed before the FCC. It shall be the responsibility of the parties to serve copies of all pleadings filed herein on the FCC.

Accordingly, IT IS ORDERED THAT:

(1) This case is hereby dismissed without prejudice, consistent with the findings above. This Commission will not arbitrate the interconnection issues for the reasons set forth in the findings above.

(2) There being nothing further to come before the Commission, this case is dismissed.

EXHIBIT E

# EXHIBIT "E"

Issue	Persons with Knowledge Upon Whom Cavalier Intends to Rely
C2	Walt Cole, Steve Wisniewski, Matt Ashenden, Jim Vermeulen, John Haraburda, Brett Cameron, Larry Sims, David Whitt,
C3	David Vernon, Walt Cole, John Haraburda, Brett Cameron, Gary Timm, Larry Sims, David Whitt
C4	Marty Clift, John Haraburda, Brett Cameron, Larry Sims, David Whitt, Walt Cole
C5	Marty Clift, Walt Cole, John Haraburda, Brett Cameron, Larry Sims, David Whitt,
C6	Marty Clift, Larry Sims, David Whitt
C9	Larry Sims, Chad Edwards, Jeff Ferrio, Gary Timm; Marty Clift
C10	Matt Ashenden, Jim Vermeulen
C11	Amy Webb, Larry Sims, Walt Cole, Steve Goodwin, Matt Ashenden
C12	Amy Webb, Lisa Heath, Larry Sims
C14	Gary Timm, Jim Vermeulen
C15	Matt Ashenden, Jim Vermeulen
C16	Matt Ashenden, Jim Vermeulen
C17	Mark Zitz, Marty Clift
C18	Todd Hilder, Mark Zitz, Marty Clift
C19	Andy Lobred, Jeff Snyder, Marty Clift
C20	Rick Battle, Andy Lobred, David Whitt, Brett Cameron, John Haraburda
C21	David Whitt, Brett Cameron, John Haraburda
C24	David Whitt, Marty Clift, Brett Cameron, John Haraburda
C25	Bob Keane, David Whitt, Larry Sims
C27	Amy Webb, Larry Sims, David Whitt, Brett Cameron, John Haraburda
C28	Walt Cole, David Whitt, Marty Clift, John Haraburda, Brett Cameron
"V" Issues	To be supplied in Cavalier's Response to Verizon's Additional Issues.

EXHIBIT F

## EXHIBIT “F”

### STATEMENT OF RELEVANT AUTHORITY

Issue	Pending Proceedings	Citations to Authority
C2	Cavalier is aware of no pending regulatory proceeding relating to this issue.	<i>Marine Dev. Corp. v. Rodak</i> , 225 Va. 137, 300 S.E.2d 763 (1983); <i>E. E. Lyons Constr. Co. v. TRM Dev. Corp.</i> , 25 Va. Cir. 352, 1991 Va. Cir. LEXIS 240 (Va. Cir. 1991); <i>Law Offices Of Curtis V. Trinko, L.L.P. v. Bell Atlantic Corporation</i> , Docket No. 01-7746, 28 Comm. Reg. (P & F) 833 (2 <sup>nd</sup> Cir. 2002).
C3	Cavalier is aware of no pending regulatory proceeding relating to this issue.	<i>In the Matter of Telephone Number Portability</i> , 64 FR 46571, FCC 99-151, 16 Comm. Reg. (P & F) 757 (rel. July 16, 1999); <i>In the Matter of Access Billing Requirements for Joint Service Provision; Applications for Review</i> , FCC 89-299, MMDocket No. 87-579, Phase II, 66 Rad. Reg. 2d (P & F) 1802 (rel. Nov. 8, 1989).
C4	Cavalier is aware of no pending regulatory proceeding relating to this issue.	<i>In the Matter of Telephone Number Portability</i> , 64 FR 46571, FCC 99-151, 16 Comm. Reg. (P & F) 757 (rel. July 16, 1999); <i>In the Matter of Access Billing Requirements for Joint Service Provision; Applications for Review</i> , FCC 89-299, MMDocket No. 87-579, Phase II, 66 Rad. Reg. 2d (P & F) 1802 (rel. Nov. 8, 1989).
C5	Cavalier is aware of no pending regulatory proceeding relating to this issue.	<i>In the Matter of Telephone Number Portability</i> , 64 FR 46571, FCC 99-151, 16 Comm. Reg. (P & F) 757 (rel. July 16, 1999); <i>In the Matter of Access Billing Requirements for Joint Service Provision; Applications for Review</i> , FCC 89-299, MMDocket No. 87-579, Phase II, 66 Rad. Reg. 2d (P & F) 1802 (rel. Nov. 8, 1989).
C6	Cavalier is aware of no pending regulatory proceeding relating to this issue.	Va. Code Ann. § 56-23, §56-265.4:4 B 3, §56-265.4:4 C 3, & §56-35 (2003); 20 VAC 5-429-10, 5-429-20, 5-400-180 A, & 5-400-180 F 1, 2 & 3 (2003); <i>Princess Anne Utils. Corp. v. Commonwealth</i> , 211 Va. 620, 179 S.E.2d 714 (1971); <i>APCO v. Commonwealth</i> , 216 Va. 617, 221 S.E.2d 872 (1976); 47 U.S.C. § 271(c)(2)(Item 7). Individual municipal codes may also be applicable.
C9	Cavalier is aware of no pending regulatory proceeding relating to	<i>Deployment Of Wireline Services Offering Advanced Telecommunications Capability, etc.</i> , FCC 00-293, CC Dockets No. 98-147, <i>et al.</i> , FCC 98-188, 63 FR 45134, 45140, 13 Comm. Reg. (P & F) 1 (rel. Aug. 7, 1998), 18 Comm. Reg. (P & F) 758, FCC 99-355, 65 FR

	this issue.	1331, 8280 (Dec. 9, 1999), and 21 Comm. Reg. (P & F) 799 (rel. Aug. 4, 2000), and Memorandum Opinion and Order, and Notice of Proposed Rulemaking, 13 FCC Rcd 24012 (1998) ( <i>Advanced Services Order</i> ), <i>remanded U S WEST Communications, Inc. v. FCC</i> , No. 98-1410 (DC Cir Aug. 25, 1999) (granting the Commission's motion for remand), <i>on remand</i> 15 FCC Rcd 385 [18 CR 1266] (1999) ( <i>Advanced Services Remand Order</i> , <i>appeals pending sub nom. MCI WorldCom, et al. v. FCC</i> , Nos. 00-1002, <i>et al.</i> (DC Cir filed Jan. 3, 2000); <i>United States Telecom Ass'n v. FCC</i> , 290 F.3d 415 (D.C. Cir. 2002), <i>cert. denied sub nom Worldcom, Inc. v. U. S. Telecom Ass'n</i> , 123 S. Ct. 1571 (2003).
C10	Cavalier is aware of no pending regulatory proceeding relating to this issue.	<i>AT&amp;T Communications of Virginia, Inc. v. Bell Atlantic-Virginia, Inc.</i> , 18 Comm. Reg. (P & F) 1134 (4th Cir. 1999), <i>aff'ing in part, rev'ing in part, MCI v. Bell-Atlantic</i> , No. CIV. 97-3076 (TFH), 15 Comm. Reg. (P & F) 100 (D.C.D.C 1999); <i>MCI Telecommunications Corporation v. BellSouth Telecommunications, Inc.</i> , 13 Comm. Reg. (P & F) 1071, No. 5:97-CV-425-BR (E.D.N.C. 1998); <i>Implementation Of The Local Competition Provisions Of The Telecommunications Act Of 1996</i> , FCC 96-325, CC Docket No. 96-98, <i>et al.</i> , 61 FR 45475, 4 Comm. Reg. (P & F) 1 (rel. Aug. 1, 1996), and FCC 99-238, CC Docket No. 96-98, 65 FR 2367, 2542, 18 Comm. Reg. (P & F) 888 (rel. Nov. 5, 1999); <i>Iowa Utils. Bd. v. FCC</i> , 120 F.3d 753 (8th Cir.1997), <i>rev'd on other grounds sub nom. AT&amp;T Corp. v. Iowa Utilities. Bd.</i> , 525 US 366 (1999); <i>MCI v. U.S. West Communs.</i> , 204 F.3d 1262, 19 Comm. Reg. (P & F) 1136 (9th Cir. 1999) , <i>cert. denied</i> , 531 U.S. 1001 (2000); <i>United States Telecom Ass'n v. FCC</i> , 290 F.3d 415 (D.C. Cir. 2002), <i>cert. denied sub nom Worldcom, Inc. v. U. S. Telecom Ass'n</i> , 123 S. Ct. 1571 (2003); <i>Marcus Cable Associates v. Texas Utilities Electric Company</i> , FCC 03-173 (rel. July 28, 2003).
C11	The Virginia State Corporation Commission is considering voluntary mass migration guidelines in Case No. PUC-2001-00226.	<i>Petition Of Stickdog Telecom, Inc. Regarding Notification of Disconnection from Verizon Virginia Inc.</i> , Case No. PUC-2003-00008 (Va. SCC), 2003 Va. PUC LEXIS 32 (Feb.18, 2003); <i>Application Of ACC Telecommunications Of Virginia, LLC To Discontinue Local Exchange And Interexchange Telecommunications Services In Certain Areas Of Virginia</i> , Case No. PUC-2002-00214 (Va. SCC), 2002 Va. PUC LEXIS 428 (Dec. 6, 2002); 20 VAC5-423-10, <i>et seq.</i>
C12	Various parties have	<i>Proceeding on Motion of the Commission to Examine the Process and Related Costs of</i>

	raised “hot cut” issues at the FCC. <sup>1</sup> AT&T has raised ELP before the New York PSC.	<i>Performing Loop Migrations on a More Streamlined (e.g. Bulk) Basis (Order Instituting Proceeding), Case 02-C-1425 (NY PSC) (Nov. 22, 2002), et seq; Verizon MA Tariff #17.</i>
C14	Cavalier is aware of no pending regulatory proceeding relating to this issue.	<i>Deployment Of Wireline Services Offering Advanced Telecommunications Capability, etc., FCC 00-293, CC Dockets No. 98-147, et al., FCC 98-188, 63 FR 45134, 45140, 13 Comm. Reg. (P &amp; F) 1 (rel. Aug. 7, 1998), and 21 Comm. Reg. (P &amp; F) 799 (rel. Aug. 4, 2000), and Memorandum Opinion and Order, and Notice of Proposed Rulemaking, 13 FCC Rcd 24012 (1998) (Advanced Services Order), remanded U S WEST Communications, Inc. v. FCC, No. 98-1410 (DC Cir Aug. 25, 1999) (granting the Commission's motion for remand), on remand 15 FCC Rcd 385 [18 CR 1266] (1999) (Advanced Services Remand Order, appeals pending sub nom. MCI WorldCom, et al. v. FCC, Nos. 00-1002, et al. (DC Cir filed Jan. 3, 2000).</i>
C15	Cavalier has raised this issue in Maryland Public Service Commission Case No. 8913.	<i>Implementation Of The Local Competition Provisions Of The Telecommunications Act Of 1996, FCC 96-325, CC Docket No. 96-98, et al., 61 FR 45475, 4 Comm. Reg. (P &amp; F) 1 (rel. Aug. 1, 1996), and FCC 99-238, CC Docket No. 96-98, 65 FR 2367, 2542, 18 Comm. Reg. (P &amp; F) 888 (rel. Nov. 5, 1999); AT&amp;T Corp. v. Iowa Utilities. Bd., 525 US 366, 385 (1999); United States Telecom Ass'n v. FCC, 290 F.3d 415 (D.C. Cir. 2002), cert. denied sub nom Worldcom, Inc. v. U. S. Telecom Ass'n, 123 S. Ct. 1571 (2003).</i>
C16	Cavalier is aware of no pending regulatory proceeding relating to this issue.	<i>47 U.S.C. § 224; In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, FCC 96-325, 11 FCC Rcd 15499, (rel. Aug. 8, 1996); In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket. No. 96-98, CC Docket. No. 95-185, FCC 99-266, Order on Reconsideration (rel. Oct. 26, 1999); Cavalier Telephone, LLC v. Virginia Electric &amp; Power Company, 15 FCC Rcd.</i>

<sup>1</sup> E.g., *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-638; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; and *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147.

		17962 (2000); <i>Cavalier Telephone, LLC v. Virginia Electric &amp; Power Company</i> , Civ. No. 3:01CV106 (E.D. Va., Feb. 23, 2001).
C17	Cavalier is aware of no pending regulatory proceeding relating to this issue.	<i>U.S. West, Inc. v. FCC</i> , 17 Comm. Reg. (P & F) 87 (10th Cir. 1999), vacating <i>Implementation Of The Telecommunications Act Of 1996: Telecommunications Carriers' Use Of Customer Proprietary Network Information And Other Customer Information</i> , FCC 98-27, CC Docket No. 96-115, <i>et al.</i> , 63 FR 20326, 20364, 11 Comm. Reg. (P & F) 382 (rel. Feb. 26, 1998); FCC 99-223, 64 FR 53242, 17 Comm. Reg. (P & F) 558 (rel. Sep. 3, 1999); Third Report And Order and Further NPRM, 17 FCC Rcd 14860; 2002 FCC LEXIS 3663; 27 Comm. Reg. (P & F) 266 (rel. July 25, 2002).
C18	Cavalier is aware of no pending regulatory proceeding relating to this issue.	<i>Provision of Directory Listing Information (First Report And Order</i> , 16 FCC Rcd 2736, 2001 FCC LEXIS 473, 23 Comm. Reg. (P & F) 432, CC-Docket No. 99-273 (Jan. 19, 2001); <i>Implementation Of The Local Competition Provisions Of The Telecommunications Act Of 1996: Provision Of Directory Listing Information</i> , FCC 99-227, 64 FR 51910, 53944, 17 Comm. Reg. (P & F) 64 (rel. Sep. 9, 1999); Va. Code Ann. § 56-23, §56-265.4:4 B 3, §56-265.4:4 C 3, & §56-35 (2003); 20 VAC 5-429-10, 5-429-20, 5-400-180 A, & 5-400-180 F 1, 2 & 3 (2003); <i>Princess Anne Utils. Corp. v. Commonwealth</i> , 211 Va. 620, 179 S.E.2d 714 (1971); <i>APCO v. Commonwealth</i> , 216 Va. 617, 221 S.E.2d 872 (1976).
C19	Cavalier is aware of no pending regulatory proceeding relating to this issue.	<i>Application of Cavalier Telephone, LLC to reclassify the Bethia Wire Center into density cell one</i> , Virginia State Corporation Commission Case No. PUC010213, Final Order (Jan 31, 2002) and Order on Reconsideration (March 7, 2002); <i>In the Matter of the Application of Bell Atlantic – Delaware, Inc. for Approval of its Statement of Terms and Conditions under Section 252(f) of the Telecommunications Act of 1996</i> , Delaware Public Service Commission Docket No. 96-324, Order No. 5208 (Aug. 31, 1999); <i>In the Matter of the Tariff Filing by Bell Atlantic-Delaware, Inc. to Make Usage Rate Group and Density Cell Reclassifications</i> , Delaware Public Service Commission Docket No. 99-020T, Order No. 5481 (June 20, 2000); <i>In the Matter of the Tariff Filing by Verizon Delaware Inc. to Reclassify Density Cells in Compliance with PSC Order No. 5208</i> , Delaware Public Service Commission Docket No. 02-023T, Order No. 6057 (Oct. 29, 2002).
C20	Cavalier is aware of no pending regulatory	<i>In The Matter Of Access Charge Reform; Price Cap Performance Review For Local Exchange Carriers; Transport Rate Structure And Pricing; End User Common Line</i>

	proceeding relating to this issue.	<i>Charges</i> , FCC 97-158, CC Docket No. 96-262, et al., 62 FR 31868, 40460, 7 Comm. Reg. (P & F) 1209 (rel. May 16, 1997, corrected by Erratum June 4, 1997).
C21	Cavalier is aware of no pending regulatory proceeding relating to this issue.	<i>In the Matter of Verizon Petition For Emergency Declaratory And Other Relief</i> , FCC 02-337, WC Docket No. 02-202, 28 Comm. Reg. (P & F) 135 (rel. Dec. 23, 2002).
C24	Cavalier is aware of no pending regulatory proceeding relating to this issue.	<i>Rules Governing The Discontinuance of Local Exchange Telecommunications Service Provided By Competitive Local Exchange Carriers ("Discontinuance Rules")</i> , codified at 20 VAC 5-423-10, et seq; <i>Petition Of Metro Teleconnect, Inc. For Injunction Against Verizon Virginia Inc. and Other Relief and Request For Emergency Expedited Relief</i> , Case No. PUC-2003-00019 (Va. SCC), 2003 Va. PUC LEXIS 36 (Feb. 25, 2003).
C25	Cavalier is aware of no pending regulatory proceeding relating to this issue.	<i>In the Matter of Verizon Petition For Emergency Declaratory And Other Relief</i> , FCC 02-337, WC Docket No. 02-202, 28 Comm. Reg. (P & F) 135 (rel. Dec. 23, 2002).
C27	Cavalier is aware of no pending regulatory proceeding relating to this issue.	<i>Va. SCC Tariff No. 1 of Cavalier Telephone, LLC</i> , at 5, 6, 55 and 55.1 (rejected); <i>Bell Atlantic-New York Authorization Under Section 271 Of The Communications Act To Provide In-Region, Interlata Service In The State Of New York</i> , FCC 00-92, 19 Comm. Reg. (P & F) 1254 (March 9, 2000); <i>Law Offices Of Curtis V. Trinko, L.L.P. v. Bell Atlantic Corporation</i> , Docket No. 01-7746, 28 Comm. Reg. (P & F) 833 (2 <sup>nd</sup> Cir. 2002).
C28	Cavalier is aware of no pending regulatory proceeding relating to this issue.	<i>In the Matter of Intercarrier Compensation for ISP-Bound Traffic (Order on Remand and Report and Order)</i> , CC Docket 99-68, FCC 01-131 (rel. Apr. 27, 2001)(ISP Inter-Carrier Compensation Order), 66 FR 26800 (May 15, 2001); <i>California v. FCC</i> , 567 F.2d 84, 86 (D.C. Cir. 1977), cert. denied, 434 U.S. 1010 (1978).
"V" Issues		To be supplied in Cavalier's Response to Verizon's Additional Issues.